



**THE COMMONWEALTH OF MASSACHUSETTS
AUTO DAMAGE APPRAISER LICENSING BOARD**

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CHAIRMAN

CARL GARCIA
DAVID KRUPA, CPCU
JOSEPH COYNE
THOMAS MCCLEMENTS

Minutes of Meeting of the Board on February 25, 2014, Approved the Board on April 29, 2014 by a Vote of 5-0, Motion by Chairman Cox, Second by Member Garcia

February 25, 2014 Minutes of Board Meeting

**Automobile Damage Appraiser Licensing Board Meeting Held at
Division of Insurance, 1000 Washington Street, Boston, Mass.**

Members Present:

Gilbert Cox, Chairman
Carl Garcia
David Krupa
Thomas McClements

Attending to the Board:

Michael D. Powers, Counsel to the Board
Amy Conti, Docket Clerk for the Division of Insurance took the minutes of the Board meeting.

Proceedings recorded by:

Jillian Zwien of the Alliance of Automotive Service Providers of Massachusetts (Audio/Video)

Review of minutes:

Review of the minutes from the meeting held on October 2, 2013 and December 3, 2013 was conducted by the Board.

A Motion was made by Board Member Carl Garcia and seconded by Board Member David Krupa to approve the minutes of the Board Meeting held on October 2, 2013. The motion passed by a Vote of: 4-0.

A Motion was made by Board Member Carl Garcia and seconded by Board Member David Krupa to approve the minutes of the Board Meeting held on December 3, 2013 with an amendment to the proposed minutes reflecting that the proceeding had been recorded by Jillian

Zwien of the Alliance of Automobile Service Providers of Massachusetts. The motion passed by a Vote of: 4-0.

Report on Licenses:

Board Member Garcia reported the results of the January 7, 2014, Part II examination for Motor Vehicle Damage Appraisers License were: 17 passed the test; 10 failed. Mr. Garcia explained that the day before the test he provides a review of the examination for any examinee and Jillian Zwien, Executive Director, of the Alliance of Automobile Service Providers of Massachusetts also provides a review for any examinee who wishes to take advantage of the opportunity.

Next Part II Exam:

Board Member Garcia reported that the next part II examination will be held on April 1, 2014, in Taunton. There will be a review provided by Jillian Zwien and Board Member Garcia before the examination is held, and examinees will be offered the opportunity to participate at it.

Discussion of Changing the Application for Motor Vehicle Damage Appraiser License

At the December 3, 2013, Board Meeting the Board discussed the possibility of changing the "Application for Motor Vehicle Damage Appraiser License" background question about prior criminal history, question 16, for reporting misdemeanor offenses. Some Board Members believed that they were being provided too much information about an applicant's criminal background, especially misdemeanor offenses and juvenile offenses which have been disclosed by applicants, and would consider changing the relevant question to that asked by the Division of Insurance on their Uniform Application for Individual Producer License/Registration.

The Board was provided with copies of the current language of the Application for Motor Vehicle Damage Appraiser License which read:

16. Have you **ever** been convicted of, or arrested or prosecuted for any crime or offense against the laws of this or any other state or country or pleaded nolo to any indictment or complaint for any such crime or offense, or been placed upon probation thereof, or is there pending against you any indictment, information, complaint or proceeding for a violation of such laws? If yes please give full details, giving the date of conviction or plea of nolo, the name and the location of the court in which the indictment, etc. is pending, the plea made or the conviction was rendered, the exact name of the offense charged and the penalty imposed.

The Board was also provided with the relevant current language about background criminal information contained in the Division of Insurance's Uniform Application for Insurance Producer License/Registration question "Background Information" which in relevant part provides:

The Applicant must read the following very carefully and answer every question. All written statements submitted by the Applicant must include an original signature.

1. Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?
Yes ___ No___

Note: “Crime” includes a **misdemeanor**, a **felony** or a **military offense**.

You may exclude misdemeanor traffic citations and misdemeanor convictions or pending misdemeanor charges involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses.

“Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine.

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a copy of the charging document,
- c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

Counsel to the Board, Michael Powers, explained that not all of the Background questions contained in the Division of Insurance’s Uniform Application for Individual Insurance Producer License are relative to the Application for Motor Vehicle Damage Appraisers License, such as questions about 18 USC §1033 and bankruptcy. The proposed language adopted from the “Background Information” question contained in the Application for Individual Insurance Producer License is the relative language contained in the application for motor vehicle damage appraiser, question 16.

Chairman Cox raised the issue whether the Board should require applicants to disclose any prior criminal history of DUI (“Driving Under the Influence” of intoxicants or other controlled substances as provided for under M.G.L. c. 90).

Board Member Garcia stated that in the past when an applicant revealed a criminal history for such an offense the board approved the applicant to take the Part II examination for the Motor Vehicle Damage Appraiser’s License. Mr. Garcia asserted that such offenses were not relevant to the duties of a motor vehicle damage appraiser.

The motion was made by Board Member Garcia to change the language in the Application for Motor Vehicle Damage Appraiser License by deleting the current language contained in question 16 and replacing it with the relative language contained in the Division of Insurance’s Uniform Application for Individual Producer License/Registration. The motion was seconded by Board Member David Krupa.

The motion passed by a vote of: 4-0.

New Business:

Board Member McClements suggested that the Board’s regulation 212 CMR 2.00 and 211 CMR 133.00 should be reviewed.

Board Member Garcia submitted that 212 CMR 2.00 needed to be looked at by the board, specifically in regards to appraisal systems and language; he also suggested that definitions be

reviewed. Mr. Garcia voiced his concern about some plans and the manner that auto body repair shops are accepting assignment of appraisals. He wanted to clarify that in order for an auto body shop to write an appraisal, they need permission, and that decisions must be made internally by insurance companies, not by “driving claim centers”.

Board Member Garcia suggested that 212 CMR 2.00 should be reviewed as it relates to appraisal language and definitions contained in the regulation. Mr. Garcia elaborated that an appraisal must always be at the request of the consumer and an auto body repair shop must always act in the best interest of the owner of the motor vehicle, the consumer, and never in the interest of an insurance company. It is clear that for a repair shop to repair a motor vehicle, it must be at the approval of the customer in accordance with the Office of the Attorney General’s regulations. In addition, Mr. Garcia asserted that he believes that the regulation 212 CMR 2.04 (1)(a) should be changed by increasing the minimum amount of any loss or damage to a motor vehicle from \$1,500 currently required for the assignment of an appraiser, under the regulation, to \$4,000 under 212 CMR 2.04.

Mr. Garcia raised some concerns that Board Member Joseph Coyne had about the manner of appraisals. Board Member Garcia stated that Board Member Coyne had an issue about appraisers conducting appraisals “in person” and an issue about conflicts in some appraisals.

Chairman Cox as a point of order stated that Mr. Coyne, who was not in attendance at the Board’s meeting, should express his concerns and opinions in person. Chairman Cox explained that, otherwise the Board would be indulging in speculation as to Mr. Coyne’s beliefs and opinions about these matters. If Mr. Coyne has a belief or any opinion, then he must state it in person.

Board Member Krupa stated that the General Counsel for the Division of Insurance had written a letter to the Board about the ability of an appraiser to conduct an appraisal by the use of photographs and video equipment, which satisfied the regulation’s requirement, 212 CMR 2.04, of the appraiser conducting the appraisal “in person.” Mr. Krupa asserted that, automobile body shops could make an estimate of damage to the vehicle and then submit it to the insurance company, and the insurance company could then assign an appraiser to personally conduct an appraisal of the damage to the motor vehicle by reviewing photographs and video footage of the damage.

Board Member Garcia raised an additional issue and suggested that the regulation should be clarified; making it clear that the estimate from an auto body repair shop is not a promise of what the insurance company would pay for the cost to repair the motor vehicle.

Board Member Krupa stated that these issues were already resolved in the Direct Payment Plans that have been filed with the Division of Insurance by the Hanover Insurance Company and Metropolitan Insurance Company and approved by the Commissioner. Mr. Krupa asserted that these plans, which have been filed with the Division of Insurance, are crystal clear and easily understood.

Mr. Krupa stated his opinion, that because 212 CMR 2.00 and 211 CMR 133.00 were enacted before there were any Direct Payment Plans issued by insurance companies, these regulations should be amended to reflect the current status of things.

Mr. McClements stated that 212 CMR 2.00 provides that auto body shops are entitled to be compensated for appraisals. The regulation reads that the ADALB can enforce the fees set for appraisals. He further stated that the ADALB should set the fees that are charged for appraisals.

Chairman Cox felt that by setting standard fees charged for appraisals the Board could potentially violate anti-trust laws.

Mr. McClements stated that Massachusetts is the only state that mandates used and after-market parts in the repair of motor vehicles. He said that he would like to see 211 CMR 133.00 amended by taking out the language about used or aftermarket parts and would delete 133.04(1) a-e. He also felt that a specific number of days should be established that an insurance company's appraisal must be produced after an assignment for a re-inspection for an "intensified appraisal".

Chairman Cox pointed out that the Board does not have the authority to amend 211 CMR 133.00 and that the Commissioner of Insurance does. Mr. McClements agreed, but felt that the Board could make a recommendation.

Proposed Items for the Agenda of the Next Meeting:

- I. Report on the April 1, 2014, Motor Vehicle Damage Appraisers Test for Licensure.
- II. Discussion of setting fees for Appraisals conducted by motor vehicle damage appraisers licensed by the Board.
- III. Discussion of amending the ADALB's regulation, 212 CMR 2.00.
 - A. Potentially amending 212CMR 2.00 to make it consistent with 211 CMR 123.04 "Procedure for Approval of Direct Payment Plans."
 - B. Potentially amending 212 CMR 2.04 "Procedure for the Conduct of Appraisals and Intensified Appraisals." Increasing the current amount from \$1,500 to \$4,000 or less for damage to a motor vehicle.
 - C. Clarifying the use and manner of conducting appraisals through the use of video technology, photography, or other media consistent with the requirement that "The appraiser shall personally inspect the damaged motor vehicle" 212 CMR 2.04(d).
 - D. 211 CMR 123.00 and 212 CMR 2.00, Reviewing direct payment plans and creating consistency between these two regulations.
 - E. Providing for a specific time period from which an assignment is made by an insurance company to a motor vehicle repair shop and the time in which an appraiser must arrive at the motor vehicle repair shop to conduct an appraisal of a damaged motor vehicle.

Date for Next Meeting:

The Board Members agreed to set the date of the next meeting for April 29, 2014 at 9:30AM.

Executive Session:

Mr. Krupa moved to enter an executive session to discuss the reputation and character of pending applicants for the part II examination for Motor Vehicle Damage Appraisers, the motion was seconded by Mr. McClements. Roll Call vote: 4-0 in favor.

There were two applicants who were approved to take the Part II exam.

After the conclusion of each discussion, Chairman Cox called for votes on the motions. Mr. Garcia moved that the two applicants be allowed to take the Part II examination. The motions were seconded by Mr. McClements and voted 4-0.

There were two applicants voted by the Board who were not allowed to take the Part II examination. One applicant's request was denied without prejudice by a motion of Mr. Garcia. The motion was seconded by Mr. McClements and voted 4-0.

Discussion was then had amongst the board members on the application of Ronald Waxman. Mr. Waxman had answered "No" on question 16 of the Application for Motor Vehicle Damage Appraiser License which read:

16. Have you **ever** been convicted of, or arrested or prosecuted for any crime or offense against the laws of this or any other state or country or pleaded nolo to any indictment or complaint for any such crime or offense, or been placed upon probation thereof, or is there pending against you any indictment, information, complaint or proceeding for a violation of such laws? If yes please give full details, giving the date of conviction or plea of nolo, the name and the location of the court in which the indictment, etc. is pending, the plea made or the conviction was rendered, the exact name of the offense charged and the penalty imposed.

In relevant part, Number 20 on the application provided: "I HEREBY VERIFY THE FOREGOING STATEMENTS AND DECLARE THAT THEY WERE MADE UNDER THE PENALTIES OF PERJURY." (Emphasis in original). Mr. Waxman signed it and dated it August 8, 2013.

It was later determined by the Division of Insurance that contrary to his answer "No" on the application about previous criminal convictions, in fact Mr. Waxman had been convicted of several felony offenses, including two for insurance fraud. Mr. Waxman had appeared at the Board meeting held on December 3, 2013, and was questioned about his failure to disclose his criminal convictions on the application. At that meeting, Mr. Waxman informed the Board that he had entered into an agreement with the Division of Insurance whereby the Division agreed that the revocation of his insurance license and the reasons for the revocation would remain confidential and would not be disclosed and, therefore, he believed he did not have to disclose his criminal convictions on the application. The Board requested that Mr. Waxman produce a copy of the agreement at the next meeting of the Board.

At the meeting held on February 25, 2014, a copy of the "Consent Agreement" executed March 2, 1994, between the Division of Insurance and Mr. Waxman for the revocation of "all

Massachusetts insurance licenses” was provided to the Board. The Consent Agreement did not provide for any manner of confidentiality and, indeed, provided that the violation of any of its terms could be enforced by the Office of the Attorney General. In relevant part, the Consent Agreement provides that Mr. Waxman would agree to the permanent revocation of all of his insurance licenses, sell his insurance business, and would pay a \$25,000 fine.

In addition, the Board was provided with a copy of a press release issued by the Office of the Attorney General which disclosed that on October 11, 1996 Mr. Waxman pled guilty to two counts each of insurance fraud, larceny, and attempted larceny, and admitted to sufficient facts on several more counts including forgery, placed on probation for one year, and fined \$5,000.

A motion was made by Board Member Krupa to deny Mr. Waxman’s application to take the Part II test for Motor Vehicle Damage Appraiser License on the grounds:

1. Mr. Waxman’s criminal convictions as disclosed in the Office of the Attorney General’s Press Release;
2. The Division of Insurance’s Consent Agreement permanently revoking Mr. Waxman’s insurance licenses;
3. The fact that Mr. Waxman was convicted of several crimes, including insurance fraud, and he did not disclose such convictions on his application and, thereafter, the Board was notified of the criminal convictions.

The motion was seconded by Board Member McClements and passed by a vote of 4-0.

The Board called Mr. Waxman into the Board meeting and Chairman Cox informed him of the vote and the reasons for it including the fact that Mr. Waxman answered “no” on the application relative to criminal history, when in fact he had been convicted of several crimes. When Chairman Cox informed Mr. Waxman of this, Mr. Waxman responded, “If I had answered the question and disclosed my criminal history would it have made a difference?”

Chairman Cox replied, “Because you did not disclose the information, we don’t know if it would have made a difference. The fact is that you didn’t disclose it.”

There was a licensed Motor Vehicle Damage Appraiser who sent a letter to the Board stating that someone had alleged that there were complaints filed against him with the ADALB and to his knowledge there were not any complaints filed against him. He requested a letter from the Board confirming the same. A review of the ADALB complaint file did not disclose any complaints filed against the individual. The Board voted 3-0 to send the licensed appraiser a letter from the Board confirming that there was no outstanding complaint on file with the Board.

Board Member Krupa abstained because it was brought to Mr. Krupa’s attention by the Legal Counsel to the Board, Michael D. Powers, that the licensed appraiser had indicated in his letter that he was employed by the same insurance company as Mr. Krupa, Safety Insurance Company.

Adjournment:

Chairman Cox moved to adjourn the meeting. The motion was seconded by Mr. Garcia and passed by a vote of: 4-0, whereupon the Board’s business was concluded.